



30 July 2021

Consumer Data Right Division
Treasury
Langton Cres
PARKES ACT 2600

By email
data@treasury.gov.au

Dear Treasury

Consumer Data Right Rules Amendments (Version 3) Consultation

Thank you for the opportunity to respond to the latest proposed amendments to the Consumer Data Right Rules (Version 3).

1. About Mastercard

Mastercard is a technology company in the global payments industry that connects consumers, financial institutions, merchants, governments, digital partners, businesses and other organisations worldwide, enabling them to use electronic forms of payment instead of cash and cheques.

Mastercard is developing market-leading applications and services to enable and safeguard the open banking ecosystem across the globe. These services include:

1. **ID from Mastercard:** a multi-party digital identity network that provides individuals with the ability to create, manage and use a reusable digital identity across a range of use cases;
2. **ID Verification:** a flexible suite of API-based services that support real time verification of an individual's identity across a range of use cases;
3. **Open Banking Connect:** a universal connection to financial institutions' open banking functionality in the European market, providing third parties with scale, resilience and speed to market;
4. **Open Banking Protect:** near real time verification of third-party's certificate, regulatory license status and passporting permissions to support Europe's financial institutions when deciding to accept a third party's request; and
5. **Open Banking Consulting:** professional advice and hands-on support to help global financial institutions define and execute a strategy to thrive in the open banking eco system from Mastercard advisors.

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Further to the above, Finicity, a newly acquired Mastercard company, operates a data access and insights platform, which:

- strengthens Mastercard's capabilities and offerings to consumers and businesses. Mastercard's existing technology and expertise combined with Finicity's analytics platforms will help streamline the process for credit decisions for consumers and small businesses; and
- enhances Mastercard's commitment to responsible data practices focussed on the individual by delivering best-in-class data management practices by partnering with banks and their customers to ensure connectivity is established.

Mastercard has developed seven core principles it believes should form the backbone of open banking which will protect consumers, foster responsible innovation and aid inclusive growth:

1. **Consumer control:** Personal information belongs to the individual who controls how it is used and shared. All aspects of data sharing should address consumer protection, dispute resolution and liability in a manner that balances the needs of participants and encourages uptake of services within the data sharing eco-system.
2. **Transparency:** Individuals have a right to know how their personal information is handled.
3. **Fair and ethical use:** Personal information is handled in an ethical, fair and inclusive manner, with full respect for the choices made by individuals on how their data can be used.
4. **Privacy by Design:** Privacy safeguards are embedded in the design of all products, services and technologies, by default.
5. **Security by Design:** Personal information and payment processes are kept safe and secure.
6. **Accountability:** Companies handle personal information lawfully and responsibly and can demonstrate compliance.
7. **Free Data Flows:** Personal Information can flow freely across industries and borders, subject to appropriate controls.

Mastercard believes the adoption of these principles will help reduce risk and enhance consumer and industry trust in open banking. Mastercard is pleased to see that the amendments to the Consumer Data Right Rules (version 3) by their design, aim to implement the above principles.



2. Summary

Mastercard is supportive of the proposed amendments to the Consumer Data Right Rules (version 3) and we provide our feedback as highlighted below.

For open banking to be successful and to work in the interests of all stakeholders, responsible innovation is needed. This requires an approach that is both flexible and shaped by industry-wide engagement. Mastercard is pleased that the various consultations in respect of the Consumer Data Right Rules, including this consultation, are promoting this flexibility while still ensuring that the CDR data and rights of consumers are protected.

3. Specific comments on the Bill's exposure draft

CDR Insights

Mastercard is supportive of the proposed amendments for CDR insights as it provides further benefits to consumers to use their CDR data for additional purposes and increases convenience.

Providing consumers with the ability to consent to their CDR data being shared with persons not within the ecosystem for prescribed purposes considered low risk provides consumers with a safe way to disclose personal information. Mastercard is in favour of such amendments as they provide greater flexibility for consumers whilst still requiring adherence to the data minimisation principle and the express consent requirements under the Consumer Data Right Rules.

The proposed amendments also promote transparency by requiring an accredited person to update the consumer dashboard to keep records of each such disclosure.

Given the CDR data, once disclosed, will no longer be protected by the Privacy Safeguards, Mastercard is supportive of the limited prescribed purposes:

- (a) to identify the consumer;
- (b) to verify the consumer's account balance;
- (c) to verify the consumer's income; and
- (d) to verify the consumer's expenses.

Mastercard recommends however that consideration be given to expanding the prescribed purposes, in particular to allow, in respect of the identification of the consumer, for the verification of certain attributes (not being sensitive personal information) of a consumer. This would allow, for example, for verification of:



- age for the purchase of goods or services, or accessing or viewing content, which is age restricted; and/or
- employment (i.e. employer, duration of employment, payroll provider),

to enable a greater range of consumer origination services.

As the Consumer Data Right Rules are applicable to other industries and used by a greater number of consumers, Mastercard further recommends that the prescribed list of purposes continue to evolve.

Pathways to participation: (A) outsourcing; (B) sponsorship; (C) CDR representatives

Mastercard supports the additional ways participants can engage in the open banking ecosystem to provide services to consumers. Each of the new pathways listed below promotes innovation and flexibility for entities providing goods and services to customers while still maintaining strict data security as well as customer control over their CDR data.

The key for each of the proposed models will be ensuring the appropriate allocation of responsibility and liability to the relevant parties in each case and that such allocation is made clear to both providers and consumers who are engaging with the various providers in the open banking ecosystem.

(A) Unaccredited outsourced service providers

The proposed amendments to Consumer Data Rule 1.10 will enable accredited data recipients to further utilise unaccredited third parties in outsourcing arrangements. The amendments remove: (1) the requirement for an intermediary to be an accredited person to collect CDR data on behalf of another accredited person; and (2) the prohibition on subcontracting collection services.

Mastercard welcomes these proposed changes as they can help reduce the cost of building and operating APIs that connect to data holders and allow for accredited persons to better leverage the full suite of available technologies and services in providing services to consumers by using for example cloud offerings as well as enabling accredited persons to engage members of their corporate group to develop goods and services while still maintaining the strict data protection controls, contractual requirements between the various parties and liability on the principal for breaches by intermediaries for the benefit of consumers.

The success of open banking relies heavily on the development and use of APIs to further enable the safe sharing of data in an efficient and effective way and to maximise the ease with which consumers can access open banking. Mastercard welcomes the flexibility that these additional models create so as to promote such development and as a result encourage participants to collect data within the CDR regime and not use alternatives. It is imperative for any developments to the CDR



regime to continue to be considered in light of the impact of any changes on the development and use of technologies.

(B) Sponsored accreditation

Mastercard welcomes the proposed amendments to enable a person to be a "sponsored" CDR participant provided that an unrestricted accredited person is willing to act as their sponsor. This new accreditation will create a lower barrier to entry which will enhance the services available to consumers whilst still ensuring data security and transparency for consumers given the obligations on sponsors in respect of affiliates, the requirement on affiliates to make consumer data requests through their sponsor or another accredited data recipient and the fact that a sponsored accredited person cannot use outsourced service providers to collect data on their behalf.

(C) CDR Representative model

Subject to our overarching comment regarding transparency to consumers on CDR participants' responsibilities and liabilities, Mastercard agrees with Treasury that providing the ability for CDR participants to enter into a CDR Representative arrangement provides flexibility that will enable this model to fit a broad range of stakeholder business models. The statutory burden for breaches of the Consumer Data Right Rules will continue to lie with the principal and the principal must provide disclosure to the consumer of such arrangement.

Trusted professional advisers

The proposed amendments would also allow consumers to consent to further disclosures by accredited persons to a consumer's nominated trusted advisor (within a specified class). The trusted advisors will include qualified accountants, legal representatives, financial advisors and mortgage brokers.

Mastercard welcomes the expansion of the Consumer Data Right regime as it enables personal information to flow freely across industries for the benefit of the consumer while maintaining data security and assurances that the data will not be mismanaged. Mastercard appreciates that the trusted advisors are professions which are sufficiently regulated to ensure consumer confidence.

The explanatory materials indicate that guidance material will be developed to assist accredited persons in disclosing this data to the trusted advisers. In developing such guidance, Mastercard recommends that consideration be given to:

- (a) who will be considered the trusted advisor i.e. will it be an individual or a firm in the case of accountants, lawyers, mortgage brokers, financial advisors etc;
- (b) how would an accredited person be able to satisfy themselves that someone is a trusted adviser for these purposes, in particular whether this requires



verification against records held with a professional or regulatory body and if so whether such professional bodies will be compelled to publish details of members for these purposes?

As the Consumer Data Right expands further, and across industries, Mastercard asks that Treasury continue to consider additional trusted advisors that could be included as part of the ecosystem (who are subject to existing professional and/or regulatory oversight) as well as trusted advisers outside of Australia (given many of the professions on the list are regulated throughout the globe).

4. Future changes to the Consumer Data Rules

Mastercard supports the further development of the Consumer Data Right Rules to expand the open banking ecosystem which will further benefits consumers by enabling CDR participants to innovate and offer more goods and services to consumers.

In addition to the amendments in this *version 3*, Mastercard is keen to engage with Treasury further on the recommendations set out in the Inquiry in Future Directions for the Consumer Data Right (dated October 2020), including aggregated consent models.

As foreshadowed in the Future Directions report, enabling easy to use aggregated consent models will be key to enable consumers to avail themselves of the services offered without undue burden in managing their consents and enabling consumers to understand how their data is being shared and used. The availability of consent management services would also ease the burden on businesses wanting to participate in the CDR regime and enhance as a result the offerings available to consumers.

In addition, Mastercard suggests that Treasury further consider whether requiring consents from both the data holder and the accredited person will also be required in all instances or whether there could be particular categories of data, data use cases and/or accredited persons where requiring the consent of the data holder might:

- introduce unnecessary friction; and/or
- negatively impact take up by consumers who perceive the actions required of them outweigh the benefit of their consenting to data being shared for a specific service.

5. Further Discussion

Mastercard appreciates the opportunity to comment on the amendments to the Consumer Data Right Rules (version 3). We would be pleased to meet with Treasury to discuss the contents of our submission further. If you would like to discuss the contents of our submission, or require additional information, Chris Siorokos, Director Public Policy, can be contacted on 02 9466 3720 or via email to chris.siorokos@mastercard.com.



Yours sincerely

A handwritten signature in black ink that reads "Richard Wormald".

Richard Wormald
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Australasia